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SUPREME COURT OF ARIZONA

PETITION TO AMEND THE	) Supreme Court No. R-20-0044
RULES OF PROCEDURE FOR	)
THE JUVENILE COURT, AND	) REPLY RE: RULE 52.1
TO AMEND CIVIL RULE 81.1*	)
	)
_____	)

**1. Introduction.** The April 28, 2021 petition filed by the Juvenile Rules Task Force (“Task Force”) requested, among other items, that the Court adopt 124 new Juvenile Rules. The petition requested the Court’s expedited consideration and early adoption of one of those rules, Juvenile Rule 335. This rule concerns Qualified Residential Treatment Programs (“QRTPs”). Petitioner requested a September 1, 2021 effective date for this rule, well before the proposed July 1, 2022 effective date of the other juvenile rules. To facilitate integration of this new rule with the numbering of the existing juvenile rules, petitioner proposed numbering the interim rule on QRTPs as Rule 52.1.

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\* The caption of the April 28, 2021 petition referred to Civil Rule 81. It should have referred to Rule 81.1. The caption of this Reply cites the correct rule reference.

On May 3, 2021, the Court granted the request for expedited consideration, opened proposed Rule 52.1 for public comments, and set a June 15, 2021 comment deadline and a June 28, 2021 deadline for the reply. The Arizona Attorney General (“AAG”) and the Children’s Action Alliance (“CAA”) filed timely comments concerning proposed Rule 52.1.

On June 21, 2021, the Editorial Group (see page 6 of the R-20-0044 petition for a description of the Editorial Group), joined by several other Task Force members with special interest and expertise in QRTPs (referred to colloquially as the “Editorial Group Plus”), and with the consent of the other Task Force members, met to discuss those comments. This is the Task Force reply to those comments.

**2. Summary.** The title of proposed Rule 52.1 is “Qualified Residential Treatment Program; Judicial Review.” The rule implements certain provisions of the federal Family First Prevention Services Act. The federal legislation is intricate and includes detailed requirements concerning QRTPs. Proposed Rule 52.1 is commensurately lengthy and complex; it contains six sections, most of which contain multiple subparts. The AAG and CAA both raised issues concerning Rule 52.1(d)(2). The CAA comment also raised an issue concerning Rule 52.1(b)(2). The Editorial Group Plus, after fully discussing these comments, now proposes amendments to those Rule 52.1 subparts. The comments served as catalysts for these amendments, but the amendments differ from those proposed by the comments. The

modified version of Rule 52.1 is attached to this reply as Appendix C-2. The appendix includes mark-up and clean versions.

**3. Comment concerning Rule 52.1(b)(2).** Rule 52.1(b), titled “definitions,” includes three subparts: (1) “Qualified Residential Treatment Program,” (2) “Qualified Individual,” and (3) “QRTP Assessment.” As subpart (b)(1) expressly states, a QRTP provides short-term out-of-home placement for children with specific treatment needs in a setting that qualifies for federal funding. A child who the Department of Child Safety (“DCS”) places in a QRTP must have a “QRTP assessment,” defined in subpart (b)(3), performed by a “qualified individual,” as defined in subpart (b)(2).

Rule 52.1 subpart (b)(2), as proposed by the Task Force, was based on a provision in 42 U.S.C. § 675a (“Additional case plan and case review system requirements”). Section (c) of the federal statute is titled “assessment, documentation, and judicial determination requirements for placement in a qualified residential treatment program.” Clause (c)(1)(D)(i) of the statute contains the following definition of a “qualified individual,” and clause (c)(1)(D)(ii) provides for a waiver of qualifications:

- (i) Subject to clause (ii), in this subsection, the term ‘qualified individual’ means a trained professional or licensed clinician who is not an employee of the State agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the State.

- (ii) The Secretary may approve a request of a State to waive any requirement in clause (i) upon a submission by the State, in accordance with criteria established by the Secretary, that certifies that the trained professionals or licensed clinicians with responsibility for performing the assessments described in subparagraph (A) shall maintain objectivity with respect to determining the most effective and appropriate placement for a child.

After much initial discussion, the Task Force proposed a rule definition of “qualified individual” that substantially mirrors the federal provision. It’s proposed subpart (b)(2) includes the “trained professional or licensed clinician” language in the federal law, as well as the remaining qualifications of clause (i), which the Task Force included as Rule 52.1 subparts (b)(2)(B) (“not an employee”) and (b)(2)(C) (“not connected or affiliated.”) Those two subparts contemplate the possibility of a waiver under federal clause (ii). Both rule subparts accordingly contain an express cross-reference to 42 U.S.C. § 675a(c)(1)(D), thereby allowing Arizona to request a waiver of a clause (i) requirement.

CAA suggests deleting “trained professional” from proposed subpart (b)(2). Based on the wording of the federal provision, which permits a trained professional to make the assessment, the Task Force declined this suggestion. CAA then suggested adding that the qualified individual have “two or more years child welfare experience.” The Task Force also declined this suggestion, first, because the requirement is not in the federal provision, and second, because the Task Force

anticipates that DCS will engage individuals with appropriate experience to perform these assessments.

CAA also suggested a new subpart (b)(2)(B), which would require that the qualified individual “not have direct case management responsibility or placement authority for the child who is the subject of the QRTP assessment.” After discussion, the Task Force declined the CAA’s proposed amendment but recognized the underlying concern about the need for objectivity by the qualified individual who prepares the QRTP assessment. The word “objectivity” is included in the federal waiver exception of clause (ii) but the word is not in the clause (i) general provision. The Task Force believes objectivity should apply in both circumstances. Accordingly, it now proposes the following two-word amendment to subpart (b)(2)(A):

“[that the qualified individual] is objective and qualified to conduct a QRTP assessment; ...”

The Task Force anticipates that a party might challenge the qualifications of the individual preparing the QRTP assessment. By adding these two words, a party could rightfully challenge that individual’s objectivity.

**4. Comments concerning Rule 52.1(d)(2).** Rule 52.1(d) is titled “QRTP Placement and Approval.” Subpart (d)(2) is titled “Procedure.” The AAG and CAA both filed comments concerning Rule 52.1(d)(2), subpart (B).

Here is a summary of the applicable procedural timeline. Federal law requires judicial review of a QRTP placement “within 60 days of the start of each placement.” See 42 U.S.C. § 675a(c)(2). Accordingly, proposed Rule 52.1 provides that DCS must notify the court within 5 days of placement that the child is in a QRTP (subpart (d)(1)(B)); upon receiving the notice, the court must set a review hearing no later than 60 days after the placement. See subpart (d)(2)(A). Proposed Rule 52.1(c) requires the qualified individual to complete the QRTP assessment “no later than 30 days after the start of the child’s placement in the QRTP.” Under proposed Rule 52.1(d)(2), DCS has 10 days after receiving the completed assessment to file a motion requesting court approval of the placement. The motion must include the QRTP assessment as supporting documentation. In other words, the Task Force expects that the completed QRTP assessment will be filed with the court no later than the 40<sup>th</sup> day (30 days plus 10 days) after the start of the placement.

***The AAG’s comment.*** The AAG comment, at page 3, accurately noted that the Task Force anticipated that the QRTP assessment would be completed only after a child was placed in a QRTP. The AAG’s comment explained that in practice, DCS might receive assessments before it has identified an appropriate QRTP and placed the child in that setting. DCS noted that the proposed rule would require DCS to file the motion for court approval of the placement within 10 days after receiving the assessment, even if a QRTP placement had not yet occurred. It therefore requested

an exception to this 10-day time limitation for scenarios where the assessment is completed before placement. The AAG's proposed exception would provide, "... unless DCS receives the assessment prior to placing the child in a QRTP, in which case the motion must be filed no later than 10 days after the child's placement in the QRTP."

The Task Force was concerned that the AAG's proposed amendment would allow DCS to file stale assessments, that is, assessments that might have been completed months before the actual placement. The Task Force noted the language of 42 U.S.C. § 675a(c)(1)(A), which requires that the assessment be done "within 30 days of the start of each placement ...." The phrase "within 30 days of the start" would seemingly permit an assessment before the placement, but only if completed no more than 30 days before the child is actually placed. Moreover, the Task Force concluded that the rule should provide guidance when the proffered assessment was done more than 30 days before the placement. Because there might be a change of circumstances in the interval between the completion of the assessment and when it is filed with the court, the modified rule would require that an assessment done more than 30 days before placement either be supplemented or done again, unless the parties, with court approval, agree otherwise. Here is the modified language that the Task Force proposes:

DCS must file a motion seeking approval of the child's placement in the QRTP no later than 10 court days after receipt of the QRTP

assessment. However, an assessment may be completed within 30 days before the placement, and in that circumstance, DCS must file the motion no later than 10 days after the child’s placement in the QRTP. If the assessment was completed more than 30 days before the placement, the assessment must be supplemented or done again, unless the parties with court approval agree otherwise. The motion must contain supporting documentation, including the QRTP assessment.

***The CAA comment.*** As noted above, federal law requires judicial review of a QRTP placement “within 60 days of the start of each placement.” The proposed rule requires the court to conduct a hearing on DCS’ motion for court approval of the placement within that time. Current Juvenile Rule 46 (“motions”) would allow other parties at least five days after service of DCS’ motion to file a response.

Being mindful that the QRTP process for judicial review has not yet become operational, the Task Force nonetheless contemplates that the other parties might agree with DCS’ motion requesting approval of a QRTP placement. Accordingly, proposed subpart (d)(2)(B) provides, “If no party objects to placing the child in the QRTP, the court may rule on the motion based on the supporting documentation without a hearing.” In deciding the motion, “whether contested or uncontested,” the court must consider several specified items, including the assessment, the views of the child and the child’s family, and whether the placement is effective and consistent with the child’s goals.

CAA would replace the language “if no party objects to placing the child in the QRTP” with the words, “if all parties agree to waive the right to a hearing on the motion.” The CAA’s language would flip the presumption that a failure to object constitutes a waiver, and instead require an affirmative waiver. The Task Force disagrees with CAA’s proposal. It is not burdensome for a party to object. A party who fails to object should be aware that the party is waiving the right to a hearing. Requiring the court to conduct a hearing in the absence of an objection would result in the court conducting unnecessary hearings. The current language accomplishes what CAA seeks—preservation of the right to a hearing—in a more practical and efficient manner.

The Editorial Group Plus noted that language added to subpart (d)(2)(B), as shown at pages 6 and 7 of this reply, has made that subpart undesirably lengthy. The additional language has consequently relegated the important language requiring an objection to DCS’ motion to the very end of the subpart. To emphasize this important language, the Task Force proposes to bifurcate subpart (d)(2)(B). New subpart (b)(2)C) would contain the same language concerning an objection that formerly appeared in subpart (b)(2)B), but the provision would be more apparent. New subpart (d)(2)(C) says, “If no party objects to placing the child in the QRTP, the court may rule on the motion based on the supporting documentation without a hearing.”

Current subpart (d)(2)(C), which specifies items the court must consider in deciding the motion, with or without a hearing, would accordingly be renumbered subpart (d)(2)(D), as shown in Appendix C-2.

**5. Correction of typographical errors.** By this reply, the Task Force requests to correct two typographical errors in its previous submission of proposed Rule 52.1. Subpart (c)(2) in the previous version referred to 42 U.S.C. § 472(k)(2). The correct reference is 42 U.S.C. § 672(k)(2). Also, in what is now subpart (d)(2)(C), the word “upon” should be “on” (i.e., “the court may rule ~~upon~~ on the motion ...”) These two corrections are shown in Appendix C-2.

**6. Conclusion.** The Task Force requests the Court to adopt the modified version of Rule 52.1, as shown in Appendix C-2, with a September 1, 2021 effective date.

The full Task Force will reconvene on August 6, 2021, after the close of the general public comment period for R-20-0044. Pending further public comments concerning Rule 335 and discussion by the Task Force, Rule 335 will incorporate the version of Rule 52.1 approved by the Court at the August rules agenda.

RESPECTFULLY SUBMITTED this 24th day of June 2021.

By /s/ Justice Rebecca White Berch  
Rebecca White Berch (Justice, ret.)  
Chair, Juvenile Rules Task Force

Copies emailed this 24th day of

June 2021, to

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## **Appendix C-2: Modified Rule 52.1**

Additions to the April 28, 2021 version of Rule 52.1 (Appendix C to the R-20-0044 petition) are shown by underline, and deletions are shown by ~~striketrough~~. The changes are highlighted in yellow to permit them to be readily identified. A clean version appears in this appendix after the markup version.

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### **Rule 52.1. Qualified Residential Treatment Program; Judicial Review**

**(a) Generally.** A child may be placed in a qualified residential treatment program under the conditions set forth in this rule, subject to approval and review by the court.

#### **(b) Definitions.**

- (1) “*Qualified Residential Treatment Program*”** (“QRTP”) means a program licensed as described in 42 U.S.C. § 672(k)(4) to serve children with specific treatment needs who need short term placement out of their homes and qualifies for funding under the federal Family First Prevention Services Act.
  - (2) “*Qualified Individual*”** means a trained professional or licensed clinician who:
    - (A)** is objective and qualified to conduct a QRTP assessment;
    - (B)** is not an employee of DCS unless the requirement is waived pursuant to 42 U.S.C. § 675a(c)(1)(D); and
    - (C)** is not connected to or affiliated with any placement setting in which children are placed by the State unless the requirement is waived pursuant to 42 U.S.C. § 675a(c)(1)(D).
  - (3) “*QRTP Assessment*”** means an evaluation by a qualified individual that assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool as described in 42 U.S.C. § 675a(c)(1).
- (c) Time to Complete the Assessment and Documentation.** No later than 30 days after the start of the child’s placement in a QRTP, a qualified individual must do all of the following:
- (1)** prepare an assessment of the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool as described in 42 U.S.C. § 675a(c)(1);
  - (2)** determine whether the needs of the child can be met in kinship care with a grandparent or another member of the child’s extended family, including a

person who has a significant relationship with the child, or in a foster home, and if not, which setting from among the settings specified in 42 U.S.C. § 472 672(k)(2) would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and

- (3) develop a list of child-specific short- and long-term mental and behavioral health goals.

**(d) QRTP Placement and Approval.**

**(1) *Notice and Disclosure.***

- (A) DCS must promptly notify the parties of the child's placement no later than 24 hours, excluding weekends and holidays, after the child is placed in the QRTP. DCS may provide the notice verbally or electronically, including by email. Notice to the child's parents may include the type of placement but must not include the child's new placement address or contact information
- (B) DCS must file a notice with the court of the child's placement in the QRTP no later than 5 court days after the placement.

**(2) *Procedure.***

- (A) Upon notice by DCS that the child is placed in a QRTP, the court must set a hearing no later than 60 days after the child's placement to assess and review the need for the QRTP placement.
- (B) DCS must file a motion seeking approval of the child's placement in the QRTP no later than 10 court days after receipt of the QRTP assessment. However, an assessment may be completed within 30 days before the placement, and in that circumstance, DCS must file the motion no later than 10 days after the child's placement in the QRTP. If the assessment was completed more than 30 days before the placement, the assessment must be supplemented or done again, unless the parties with court approval agree otherwise. The motion must contain supporting documentation, including the QRTP assessment. If no party objects to placing the child in the QRTP, the court may rule upon the motion based on the supporting documentation without a hearing.
- (C) If no party objects to placing the child in the QRTP, the court may rule on the motion based on the supporting documentation without a hearing.

- (D) In deciding the motion, whether contested or uncontested, the court must consider:
- (i) the QRTP assessment, any related documentation, and additional relevant evidence including testimony and the positions of the parties;
  - (ii) whether the child, child's family, and individuals who are identified as important to the child have had an opportunity to express their views on the placement decision;
  - (iii) whether placement of the child in the QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment; and
  - (iv) whether that placement is consistent with the short- and long-term goals for the child as specified in the child's permanency plan, or if the needs of the child can be met through another available alternative placement.

(3) **Findings.** In a signed minute entry or order, the court must find that:

- (A) the child's needs cannot be met by the child's parent, in kinship care with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child or in a foster home with support services;
- (B) a shortage or lack of family home is not the reason why the child is placed in the QRTP;
- (C) the child's placement in the QRTP provides the most effective and appropriate level of care in the least restrictive environment;
- (D) the placement is consistent with the child's permanency plan; and
- (E) if there is reason to know the child is an Indian child, the placement complies with the standards of Rule 50.1.

(4) **Orders.** The court must enter the following orders:

- (A) approving or disapproving the child's placement in the QRTP;
- (B) if the child's placement is approved, setting a further hearing as provided in section (e);
- (C) if the child's placement in a QRTP is not approved, ordering DCS to investigate alternative placements and setting a further hearing if necessary;

- (D) if it is in the child's best interests, providing for contact with siblings and other family members consistent with the treatment plan.

**(e) Continuing Review of QRTP Placement.**

- (1) **Procedure.** If the child remains placed in a QRTP for more than 60 days, the court must review the child's placement and follow the procedures set forth in subparts (d)(2) and (d)(3) of this rule at every subsequent review hearing under Rule 58 or permanency hearing under Rule 60, or at a QRTP placement review set by the court. DCS must disclose subsequent reports received from the QRTP to the court and parties no later than 15 days before the QRTP placement review.
- (2) **Findings.** In addition to the findings and orders required by subparts (d)(3) and (d)(4), the court must also make the following findings in a signed minute entry or order:
  - (A) ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement with a parent, in kinship care, relative care, or in a foster home;
  - (B) order that the specific treatment or service that the child needs is being provided;
  - (C) the length of time the child is expected to need additional treatment; and
  - (D) the efforts made to prepare the child for transition to a parent, kinship care including a person who has a significant relationship with the child, legal guardian, or an adoptive home or foster family home.
- (f) **Discharge.** The petitioner must file a motion for change of physical custody prior to discharge from the QRTP, unless there are exigent circumstances. Under those circumstances, the motion must be filed upon discharge or as soon as practicable.

## **Rule 52.1 as modified, without markup**

### **Rule 52.1. Qualified Residential Treatment Program; Judicial Review**

**(a) Generally.** A child may be placed in a qualified residential treatment program under the conditions set forth in this rule, subject to approval and review by the court.

#### **(b) Definitions.**

- (1) “*Qualified Residential Treatment Program*”** (“QRTP”) means a program licensed as described in 42 U.S.C. § 672(k)(4) to serve children with specific treatment needs who need short term placement out of their homes and qualifies for funding under the federal Family First Prevention Services Act.
  - (2) “*Qualified Individual*”** means a trained professional or licensed clinician who:
    - (A)** is objective and qualified to conduct a QRTP assessment;
    - (B)** is not an employee of DCS unless the requirement is waived pursuant to 42 U.S.C. § 675a(c)(1)(D); and
    - (C)** is not connected to or affiliated with any placement setting in which children are placed by the State unless the requirement is waived pursuant to 42 U.S.C. § 675a(c)(1)(D).
  - (3) “*QRTP Assessment*”** means an evaluation by a qualified individual that assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool as described in 42 U.S.C. § 675a(c)(1).
- (c) Time to Complete the Assessment and Documentation.** No later than 30 days after the start of the child’s placement in a QRTP, a qualified individual must do all of the following:
- (1)** prepare an assessment of the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool as described in 42 U.S.C. § 675a(c)(1);
  - (2)** determine whether the needs of the child can be met in kinship care with a grandparent or another member of the child’s extended family, including a person who has a significant relationship with the child, or in a foster home, and if not, which setting from among the settings specified in 42 U.S.C. § 672(k)(2) would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and

- (3) develop a list of child-specific short- and long-term mental and behavioral health goals.

**(d) QRTP Placement and Approval.**

**(1) *Notice and Disclosure.***

- (A) DCS must promptly notify the parties of the child's placement no later than 24 hours, excluding weekends and holidays, after the child is placed in the QRTP. DCS may provide the notice verbally or electronically, including by email. Notice to the child's parents may include the type of placement but must not include the child's new placement address or contact information
- (B) DCS must file a notice with the court of the child's placement in the QRTP no later than 5 court days after the placement.

**(2) *Procedure.***

- (A) Upon notice by DCS that the child is placed in a QRTP, the court must set a hearing no later than 60 days after the child's placement to assess and review the need for the QRTP placement.
- (B) DCS must file a motion seeking approval of the child's placement in the QRTP no later than 10 court days after receipt of the QRTP assessment. However, an assessment may be completed within 30 days before the placement, and in that circumstance, DCS must file the motion no later than 10 days after the child's placement in the QRTP. If the assessment was completed more than 30 days before the placement, the assessment must be supplemented or done again, unless the parties with court approval agree otherwise. The motion must contain supporting documentation, including the QRTP assessment.
- (C) If no party objects to placing the child in the QRTP, the court may rule on the motion based on the supporting documentation without a hearing.
- (D) In deciding the motion, whether contested or uncontested, the court must consider:
  - (i) the QRTP assessment, any related documentation, and additional relevant evidence including testimony and the positions of the parties;
  - (ii) whether the child, child's family, and individuals who are identified as important to the child have had an opportunity to express their views on the placement decision;

- (iii) whether placement of the child in the QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment; and
  - (iv) whether that placement is consistent with the short- and long-term goals for the child as specified in the child's permanency plan, or if the needs of the child can be met through another available alternative placement.
- (3) **Findings.** In a signed minute entry or order, the court must find that:
- (A) the child's needs cannot be met by the child's parent, in kinship care with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child or in a foster home with support services;
  - (B) a shortage or lack of family home is not the reason why the child is placed in the QRTP;
  - (C) the child's placement in the QRTP provides the most effective and appropriate level of care in the least restrictive environment;
  - (D) the placement is consistent with the child's permanency plan; and
  - (E) if there is reason to know the child is an Indian child, the placement complies with the standards of Rule 50.1.
- (4) **Orders.** The court must enter the following orders:
- (A) approving or disapproving the child's placement in the QRTP;
  - (B) if the child's placement is approved, setting a further hearing as provided in section (e);
  - (C) if the child's placement in a QRTP is not approved, ordering DCS to investigate alternative placements and setting a further hearing if necessary;
  - (D) if it is in the child's best interests, providing for contact with siblings and other family members consistent with the treatment plan.

**(e) Continuing Review of QRTP Placement.**

- (1) **Procedure.** If the child remains placed in a QRTP for more than 60 days, the court must review the child's placement and follow the procedures set forth in subparts (d)(2) and (d)(3) of this rule at every subsequent review hearing under Rule 58 or permanency hearing under Rule 60, or at a QRTP placement review set by the court. DCS must disclose subsequent reports received from the QRTP to the court and parties no later than 15 days before the QRTP placement review.

**(2) Findings.** In addition to the findings and orders required by subparts (d)(3) and (d)(4), the court must also make the following findings in a signed minute entry or order:

- (A)** ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement with a parent, in kinship care, relative care, or in a foster home;
- (B)** order that the specific treatment or service that the child needs is being provided;
- (C)** the length of time the child is expected to need additional treatment; and
- (D)** the efforts made to prepare the child for transition to a parent, kinship care including a person who has a significant relationship with the child, legal guardian, or an adoptive home or foster family home.

**(f) Discharge.** The petitioner must file a motion for change of physical custody prior to discharge from the QRTP, unless there are exigent circumstances. Under those circumstances, the motion must be filed upon discharge or as soon as practicable.